

REMARKS

In the final Office Action dated September 8, 2005, claims 1-20 are pending. Claims 1, 13, and 17 are independent claims from which all other claims depend therefrom. Claims 1 and 17 are herein amended. Note that claims 1 and 17 are not amended for patentability reasons and that they contain limitations that were similarly and previously provided in claims 8 and 20. Applicants recognize the allowability of claims 3-6, 8, 11-12, and 18-20 if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. However, Applicants submit and believe that since claims 1, 13, and 17 are now in allowable form that claims 3-6, 8, 11-12, and 18-20 are also allowable as originally drafted.

The Office Action states that claims 13-16 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action states that claim 13 fails to sufficiently interconnect and/or relatively position the housing and the suspended element. Applicants, respectfully, traverse.

Claim 13 recites that the suspended element is coupled to the flexible extension member. Claim 13 also recites that the flexible extension member is at least partially contained within the housing. Claim 13 further states that the flexible extension member is coupled to a seat system attachment mechanism, which is coupled to a seat frame. Although claim 13 does not recite the precise location of the housing relative to the suspended element, claim 13 does recite that the suspended element is connected to the flexible extension member, which is partially contained by the housing. This provides at least some connectivity and relativity between the elements. Also, claim 13 does recite the connection between the suspended element and the flexible extension member, the seat system attachment mechanism, and the seat frame. Thus, the precise location, interconnection, or relativity between the suspended element and the housing is not required.

Although in the Detailed Description section of the present application a suspended element is shown as being contained within a housing, claim 13 does not require such a limitation. Claim 13 does however broadly cover such a limitation.

Referring to MPEP 2173, the primary purpose of 35 U.S.C. 112, second paragraph, is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement. In reviewing a claim the Examiner must consider the claim as a whole to determine whether the claim appraises one of ordinary skill in the art of its scope. See *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). Applicants submit that since the elements of claim 13 provide some interconnection and relativity between the elements and since each element is connected to, partially contained within, or partially containing at least one of the other recited elements, that claim 13 as written does apprise one of ordinary skill in the art of its scope.

Thus, Applicants submit that the 35 U.S.C. 112 rejection set forth in the Office Action is herein overcome and that claim 13 is allowable under 35 U.S.C. 112. Also, since claims 14-16 depend from claim 13, they too are allowable for at least the same reasons.

The Office Action states that claims 1-2, 7, 10, and 17 stand rejected under 35 U.S.C. 102(b) as being anticipated by either Bell (U.S. Pat. No. 6,105,839) or Liao (U.S. Pat. No. 6,439,443 B1).

Amended claim 1 recites the limitations of a flexible extension member and a suspended element that have an associated vibration frequency that is approximately equal to a vibration frequency of a seat system. The flexible extension member and the suspended element are configured to absorb vibration within the seat system. Note that the underlined limitation is similar to the limitations recited in allowable claim 8. Also, note that neither Bell nor Liao teach or suggest a flexible extension member or a suspended element that have an associated vibration frequency that is approximately equal to a vibration

frequency of a seat system. The seat back carrier of Bell and the hanging bag of Liao do not absorb vibrational energy, as is admitted in the Office Action.

Amended claim 17 recites the limitations of determining a vibration frequency of a seat system and of absorbing vibration at the vibration frequency within the seat system. Both Bell and Liao alone or in combination fail to teach or suggest the stated limitations. Bell merely discloses a carrier that hangs from headrest posts and Liao only discloses an article hanger for hanging a bag from a set. Neither the carrier nor the hanger is designed to absorb seat vibration.

Also, referring to MPEP 2173.01 and 2173.05(g) Applicants may use functional language, which makes clear the boundaries of the subject matter for which protection is sought. There is nothing wrong with defining some part of an invention in functional terms. In addition, a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. See *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971). The functional language added to claims 1 and 17 of "a seat system vibration absorbing" flexible extension element and of "a seat system vibration absorbing" suspended element do set clear boundaries of the subject matter claimed. The functional language further requires that the flexible extension element and the suspended element absorb vibration within the seat system. As admitted to in the Office Action the relied upon art fail to teach or suggest such performance.

Furthermore, with respect to claim 17 and referring to MPEP 2173.05(v), process or method claims are not subject to rejection by U.S. Patent and Trademark Office examiners under 35 U.S.C. 112, second paragraph, solely on the ground that they define the inherent function of a disclosed machine or apparatus. See *In re Tarczy-Hornoch*, 397 F.2d 856, 158 USPQ 141 (CCPA 1968). Thus, although, claim 17 may recite the function of a system, article, or apparatus disclosed in the specification of the present application, it is not proper to reject claim 17 based on its recitation of only a functional description. Applicants submit that no other grounds for rejection have been put forth. Besides, in

general, the limitations of a method claim are functional or performance based limitations. In addition, claim 17 does include structural limitations, such as the tuned vibration absorbing system, the flexible extension member, and the seat system vibration absorbing suspended element, which further clarify to one skilled in the art the scope of the invention claimed.

Thus, not only are each and every element of claims 1 and 17 not taught or suggested by the relied upon art, but the functional language previously provided is permitted and further distinguishes the system and method of claims 1 and 17 over the prior art, and it is improper to reject claim 17 based solely on functional description language.

In order for a reference to anticipate a claim the reference must teach or suggest each and every element of that claim, see MPEP 2131 and *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628. Therefore, claims 1 and 17 are novel, nonobvious, and are in a condition for allowance. Since claims 2, 7, and 10 depend from claim 1, they too are novel, nonobvious, and are in a condition for allowance for at least the same reasons. Also, since claims 3-6, 8, 11-12, and 18-20 depend from claim 1 and 17, respectively, they are also in a condition for allowance as drafted.

Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over either Bell or Liao.

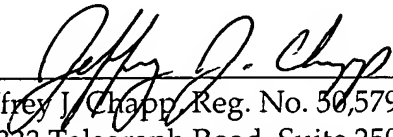
Since claim 9 depends from claim 1, it is also novel, nonobvious, and is in a condition for allowance for at least the same reasons.

In light of the amendments and remarks, Applicants submit that all of the objections and rejections are now overcome. The Applicants have added no new matter to the application by these amendments. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account 50-0476.

Respectfully submitted,

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